of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that it be properly branded under the supervision of this department and that the order previously entered for the destruction of the product be rescinded.

C. F. MARVIN, *Acting Secretary of Agriculture.*

11428. Adulteration of canned salmon. U. S. v. 726 Cases of Canned Salmon. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 17272. I. S. Nos. 5845–v, 5846–v. S. No. C–3885.)

On February 8, 1923, the United States attorney for the Southern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 726 cases of canned salmon at Houston, Tex., alleging that the article had been shipped by the Griffith-Durney Co., Seattle, Wash., on or about October 11, 1922, and transported from the State of Washington into the State of Texas, and charging adulteration in violation of the Food and Drugs Act. A portion of the article was labeled in part: "Klawack Brand * * * Fresh Alaska Pink Salmon Packed at Klawack Alaska, U. S. A. by the North Pacific Trading And Packing Company San Francisco, Calif. Net Contents One Pound." The remainder of the said article was labeled in part: "Aviation Brand * * * Fresh Alaska Chum Salmon * * * Packed at Klawack Alaska U. S. A. Packed by North Pacific Trading and Packing Company San Francisco, Cal. Net Contents One Pound."

Adulteration of the article was alleged in the libel for the reason that it was filthy, decomposed, and putrid.

On April 9, 1923, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

11429. Misbranding of Plough's Prescription C–2223. U. S. v. 135 Bottles, et al., of Plough's Prescription C–2223. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 17373, 17374. I. S. Nos. 4512–v, 4514–v. S. Nos. C–3941, C–3943.)

On or about March 19, 1923, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 169 small bottles and 78 large bottles of Plough's Prescription C–2223 at Cleveland, Ohio, alleging that the article had been shipped by the Plough Chemical Co., Memphis, Tenn., in part on or about August 28, 1922, and in part on or about February 8, 1923, and transported from the State of Tennessee into the State of Ohio, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: (Bottle) "A Blood Purifier Recommended For Treatment of Rheumatism * * * In severe cases, take * * * until relieved;" (carton, large size) "Rheumatism * * * Sciatica, Lumbago, Lame Back, Uric and Lactic Acid Conditions Blood disorders Eczema, Chronic Sores and similar affections arising from bad blood;" (carton, small size) "Blood Purifier Recommended for disorders caused by impure blood as Eczema, Chronic Sores and constitutional blood diseases. Rheumatism * * * Sciatica, Lumbago, Lame Back, Uric and Lactic Acid Conditions;" (circular) "A Reliable Blood Purifier A Treatment for Rheumatism * * * Sciatica, Lumbago, Lame Back. Blood Disorders, Eczema, Chronic Sores and Similar Diseases Caused by Bad Blood. * * * In the treatment of Scrofula, Rheumatism, certain Catarrhal Conditions, Hereditary Blood Taints, Diseases of the Bones, Ulcerous Sores, Prescription C–2223 has been recommended and used for many years. Helpless, unhappy persons who had given up all hope of relief, have found in this blood purifier a means of relief. Men, women and even children, whose energy has been sapped and their life almost wrecked, who were troubled with festering sores or tortured with rheumatic pains, have been relieved from the grip of these diseases, after the continued use of or treatment with Prescription C–2223 * * * for any trouble due to poisoned or tainted blood, get you a bottle of Prescription C–2223. * * * 'In * * * conditions due to tainted blood, it acts as a specific.' * * * 'the most valuable remedy known in the treatment of rheumatism; it eases the pain, diminishes the fever—results are almost certain in acute * * * cases.' * * * Prescription C–2223 has relieved * * * many thousands, suffering from Rheumatism, * * * Lumbago, Sciatica, diseases due to tainted or impure blood, evidenced by chronic Sores, Scrofula, Eczema and other similar conditions of the skin;"

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the product consisted essentially of potassium iodid, extracts of plant drugs including colchicum and a laxative drug, glycerin, alcohol, and water, colored with caramel and flavored with anise.

Misbranding of the article was alleged in the libels for the reason that the above-quoted statements regarding the curative and therapeutic effect of the said article were false and fraudulent since it contained no ingredient or combination of ingredients capable of producing the effects claimed.

On or about April 16, 1923, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

11430 (supplement to N. J. 7729). Decision of court overruling demurrer to indictment. (F. & D. No. 10342. I. S. No. 9326-p.)

In the above-cited case the demurrer to the indictment interposed on behalf of the defendant company was overruled on February 7, 1920, as will more fully appear from the following decision of the court (Faris, *J.*):

"The defendant has been indicted on eight counts for alleged violations of the act of June 30, 1906, as amended. To this indictment, and to each count thereof, defendant demurs. The ground of demurrer to each of the counts of the indictment is identical; so but one count need be considered.

"The indictment contains apt allegations to the effect that heretofore, to wit, in the year 1911, this same defendant was upon its plea of nolo contendere to a criminal information convicted and fined the sum of fifty dollars and costs for a violation of the same act under which defendant here stands charged in the indictment now pending. Toward these allegations of prior conviction the demurrer herein is aimed. Touching the above allegations of the indictment it is strenuously urged in the demurrer that they are impertinent, irrelevant, and that they have no relationship to, or connection with, the offense now charged in the several counts of the instant indictment. After a careful consideration of the point urged I am of the opinion that the demurrer ought to be overruled.

"The statute under which the defendant is indicted provides, among other things, that for a first offense thereunder the punishment shall on conviction be a certain minimum in the statute set forth; but that on conviction for a second offense, or any subsequent offenses thereunder, the punishment shall be increased in a certain definite manner in the statute prescribed. Notwithstanding this provision, it is strenuously insisted by defendant that the setting out of such former conviction at length in the indictment is without warrant of law and that the same will be hurtful and prejudicial to it upon its trial.

"I have been unable to find any case directly in point upon the question mooted. The Government contends that since it is well settled in the practice in the State courts, under the so-called habitual criminal acts, that former convictions must be set out in the indictment, the decisions so holding, which are numerous (State *v.* Austin, 113 Mo., 538; State *v.* Schumacher, 12 Mo., App., 569; Ward *v.* State, 53 N. Y., 511), are decisive of the point here involved. Against this insistence the defendant contends that there is no analogy existing between the two propositions. This, for the reason that in the State courts (except in a few negligible exceptions) a trial jury both finds the fact of guilt and fixes the punishment, while in the Federal courts the trial jury simply finds the fact of guilt and leaves it to the court, under the several statutes, to fix the punishment.

"I do not think that the reason urged by defendant is conclusive. It is well settled that the indictment is a mere formal charge; that it is not in any way evidentiary. Besides it is difficult to perceive the nature of the procedure, which could be invoked, in order to acquaint the court, when fixing the punishment, with the fact of a former conviction, unless such convictions were pleaded. While the court is required to take judicial notice of the whole record in a given case, the court is not required to take judicial notice of the record of one case which is pending, or which has been pending in such court, upon the trial of another and wholly disconnected case, such as two prosecutions, even against the same defendant, would constitute. Therefore absent the pleaded fact of a former conviction, the fact of such conviction would or might easily escape the attention of the court. The fact, therefore, of such former conviction, ought, I think, to be pleaded by the Government, so that